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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,519	10/31/2003	Robert A. Larson	LR-101US	4220
24314 7590 05/26/2009 JANSSON SHUPE & MUNGER LTD. 245 MAIN STREET RACINE, WI 53403				
EXAMINER				
PARSLEY, DAVID J				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
05/26/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/699,519

**Applicant(s)**

LARSON ET AL.

**Examiner**

DAVID J. PARSLEY

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 77-84 and 92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 77-84 and 92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **Detailed Action**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1-8-09 has been entered.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 77-84 and 92 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations of the illuminator being submersible appear to not be specifically disclosed in applicant's specification. While applicant's fishing net device is clearly

used in or near water, applicant's specification appears to not disclose that the illuminator portion of the net is used under water.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 77, 80-82, 84 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,854,859 to Cooper et al. in view of U.S. Patent No. 6,260,302 to Blaschke and further in view of U.S. Patent No. 5,428,484 to Baker and further in view of U.S. Patent No. 9,789,972 to Nadel.

Referring to claims 77 and 92, Cooper et al. discloses an illumination device including a telescoping handle – see at 66,67,70, a foldable frame – at 200-210, comprising, the handle being formed by a plurality of telescoping sections – see at 66,67,70, a tool adjacent section – at 68-75,168,172, having a distal end facing the tool – at 202 – see figures 9,10, the frame being secured to the tool adjacent telescoping section – see figures 9-10, and submersible LED illuminator – at 168,172, for illuminating the tool – at 202 – see figures 9-10, all of the illuminator being disposed in the distal end of the tool adjacent section – see at 168,172 in figures 9-10, and remote from the opposite end of the handle – see figures 8-10, the illuminator including, a light body – at 172, secured to the distal end of the tool adjacent section – see

figures 9-10, the light body having a tool facing section and a single inner recess – see figures 8-10, at least one light emitting diode secured within the inner recess – see figures 8-10, at least one battery secured within the inner recess for electric power to the LED – see figures 8-10, and a switch – at 18, secured to the light body – see figures 8-10, for on/off switching of electric power to the LED – see figures 1-10 and column 4 lines 19-24, and a lens – at the casing portion of the LED – at 74,172 as seen in figures 8-10. Cooper et al. does not disclose the working tool is a net. Blaschke does disclose a submersible lighted tool having a foldable frame – at 12, having a net on the frame – see at 14,15 in figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. and add the foldable frame and net of Blaschke, so as to allow for the device to be used for retrieving objects during use. Cooper et al. as modified by Blaschke does not disclose the switch having an LED-light passage portion therethrough. Baker does disclose the switch - at 14,16,42, has a light passage portion therethrough - see at 42 in figures 1-2 and column 2 lines 11-22. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke and add the switch with light passage portion therethrough of Baker, so as to allow for light to be directed from one end of the device during use. Cooper et al. further does not disclose the LED and battery are entirely disposed within the single inner recess of the light body. Nadel does disclose the LED - at 26, and battery - at 30 are both entirely disposed within the single inner recess - at 12 of the light body - see figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. and add the LED and battery entirely disposed in the single inner recess of Nadel, so as to allow for the LED and battery to be protected from any outside elements.

Referring to claim 80, Cooper et al. as modified by Blaschke, Baker and Nadel further discloses the frame has at least one surface – at 208 and/or 202, facing the LED and having a reflective portion – at 202 – see figures 9-10 of Cooper et al.

Referring to claim 81, Cooper et al. as modified by Blaschke and Baker further discloses the reflective portion is a reflective coating – see at 202 of Cooper et al.

Referring to claim 82, Cooper et al. as modified by Blaschke, Baker and Nadel does not disclose the reflective portion is one of reflective tape and reflective coating containing fluorescent pigment. However, applicant does not state that using reflective tape or coating with fluorescent pigment is critical to the operation of the invention in view of other types of reflective materials. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke and add the reflective tape or coating having fluorescent pigment, so as to allow for the device to be more visible to the user.

Referring to claim 84, Cooper et al. as modified by Blaschke, Baker and Nadel further discloses the light body – at 172, is further adapted for focusing a light beam from the illuminator on the reflective portion – at 202 – see figures 8-10.

Claims 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. as modified by Blaschke, Baker and Nadel as applied to claim 77 above, and further in view of U.S. Patent No. 5,647,623 to Shiao.

Referring to claim 78, Cooper et al. as modified by Blaschke, Baker and Nadel further discloses the switch is a rotary switch and end rotatably attached to the net-facing end of the light body and having a light passage portion therethrough – see at 14,16,42 in figures 1-2 of Baker. Cooper et al. as modified by Blaschke, Baker and Nadel does not disclose the switch has a first

end engaging a lens. Shiao does disclose the switch is a switch lens cap – at 10,22,40, having a first end engaging a lens – at 40,50 – see figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke, Baker and Nadel and add the rotary switch lens cap of Shiao, so as to allow for the device to be easily controlled by the user.

Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao as applied to claim 78 above, and further in view of U.S. Patent No. 6,305,818 to Lebens et al.

Referring to claim 79, Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao further discloses the LED illuminator is adapted for changing the light brightness level by rotating the rotary switch, the illuminator further including a plurality of switch positions – see at 10,22,40 in figure 2 of Shiao and - at 14,16,42 of Baker, corresponding to a plurality of brightness levels accessed by rotating the rotary switch lens – see figure 2 and column 4 lines 17-48 of Shiao and figures 1-2 of Baker. Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao does not disclose an illumination level control adapting the LED to the plurality of brightness levels corresponding to the plurality of switch positions. Lebens et al. does disclose an illumination level control adapting the LED to the plurality of brightness levels corresponding to the plurality of switch positions - see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao and add the illumination control of Lebens et al., so as to allow for the intensity of light produced by the device to be controlled.

Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. as modified by Blaschke, Baker and Nadel as applied to claim 82 above, and further in view of U.S. Patent No. 5,442,875 to Brundage et al. Cooper et al. as modified by Blaschke, Baker and Nadel does not disclose the surface of the frame includes an optical filter for filtering light emitted by the frame. Brundage et al. does disclose the frame – at 12, includes an optical filter for filtering light emitted by the frame – at the outer surface of 12 – see column 4 lines 38-49 and column 6 lines 17-26. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke, Baker and Nadel and add the optical filter of Brundage et al., so as to allow for light transmitted through the device to be controlled.

#### ***Response to Amendment***

4. The affidavit under 37 CFR 1.132 filed 4-15-09 is insufficient to overcome the rejection of claims 77-84 based upon Cooper et al. as modified by Blaschke and Baker as set forth in the last Office action because: the affidavit discloses why each individual reference does not teach the claimed invention, but does not disclose why the combination of these references is improper or doesn't disclose the claimed invention.

#### ***Response to Arguments***

5. Regarding claims 77-84 and 92, the Nadel reference US 6789972 is used to only disclose that the LED and battery of Cooper et al. US 6854859 can be disposed entirely in a single inner



recess of a light body as seen with items 26 and 30 inside the recess - at 12 as seen in figure 1 of Nadel. The direction the light shines and the overall configuration of the light with respect to the handle is not being taught by Nadel in the present rejection set forth above in paragraph 3 of this office action. Therefore it is deemed that Nadel discloses the newly cited claim limitations and is combinable with Cooper et al. as seen above. Further, it is deemed that the Cooper et al. and Blaschke US 6260302 references disclose LED assemblies that are capable of being submersible in that the LED assemblies of these references are sealed and can withstand being submersed into a medium such as water. Further, applicant references the affidavit under 37 CFR 1.132, see the response to this affidavit above in paragraph 4 of this office action.

### *Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/  
Primary Examiner, Art Unit 3643